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EXAMINER

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ART UNIT	PAPER NUMBER
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1771

17

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 17

Application Number: 09/518,756
Filing Date: March 03, 2000
Appellant(s): EVERETT ET AL.

Thomas M. Parker
For Appellant

EXAMINER'S ANSWER

MAILED
JAN 14 2002
GROUP 1700

This is in response to the appeal brief filed on November 13, 2002.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 9-37 and 39 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

The rejection of claims 1, 4, 6-8 and 40-42 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

4,923,454	SEYMOUR ET AL.	5-1990
5,820,973	DODGE, II ET AL.	10-1998
5,762,641	BEWICK-SONNTAG ET AL	6-1998
6,245,051	ZENKER ET AL	6-2001

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 9-37 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by SEYMOUR et al. (US 4,923,454).

SEYMOUR et al. teaches absorbent web structures suitable for incorporation into absorbent articles. (Abstract) The reference discloses a structure that comprises an entangled web of melt-blown microfibers having diameters that range from about 0.5 to 60 microns, with a dry density that ranges from about 0.006 to 0.3 g/cc. Further, it teaches the use of from about 10% to 90% by weight of substantially nonabsorbent synthetic staple fibers and/or from about 5% to 60% by weight of particles of a polymeric gelling agent. (Column 3, lines 11-36) SEYMOUR et al. further teaches that the microfibers have an average diameter ranging from about 1 to 30 microns. (Column 4, lines 41-43) For reasons of industrial hygiene, average particle sizes of polymeric gelling agent particles smaller than about 10 microns are less desirable. Particles having a smallest dimension larger than about 2 mm may also cause a feeling of grittiness in the absorbent article, which is undesirable from a consumer aesthetics

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standpoint. Preferred for use in the fluid control systems are polymeric gelling agent particles substantially, all which have a particle size of from about 10 microns to about 2 mm. The polymeric gelling agent component can comprise up to about 60% by weight of the absorbent web structures. (Column 14, lines 26-41).

SEYMOUR et al. discloses that the hydrophilic nylon copolymer used to form microfibers of the absorbent structures of their invention will have an advancing contact angle with water of 90° or less, more preferably such a copolymer will have an advancing contact angle with water between about 0° and 60°. (Column 5, lines 65-68)

For use in disposable absorbent articles, dry basis weight of the web structures will preferably range from about 100 to 800 g/m², more preferably from about 100 to 500 g/m². When such structures are to be used as absorbent cores for sanitary napkins, dry basis weight will generally range from about 200 to 450 g/m². Further, SEYMOUR et al. disclose that the caliper of the absorbent web structures can also be widely varied depending upon the desired end use of the structures. Frequently caliper of the dry web structure will range from about 0.46 to 3.1 centimeters, more preferably from about 1.5 to 2.1 centimeters. (Column 19, lines 34-49)

SEYMOUR et al. discloses that absorbent articles may use a multi-layer absorbent core configuration wherein a web structure is used in combination with one or more separate layers comprising conventional absorbent structures. (Column 21, lines 35-40). The reference further discloses that one preferred type of absorbent article is one that utilizes a multi-layer absorbent core having a first layer and second layer comprising a web structure of their invention that may contain up to about 40% by weight of polymeric gelling agent. Another preferred type of absorbent article utilizes a multi-layer absorbent core having an upper layer comprising a web

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structure of their invention and a lower layer, which comprises a laminate of at least one layer of dispersed particles of polymeric gelling agent overwrapped with sheets of tissue. (Column 21, lines 54-68).

The SEYMOUR et al. reference also teaches that absorbent articles of their invention will frequently comprise a substantially liquid impervious backing sheet, a liquid pervious top sheet and an absorbent core comprising an absorbent structure positioned between the backing sheet and the top sheet. (Column 21, lines 17-21). The reference also teaches webs prepared by air laying a stream of fibers formed by disintegrating dry lap, followed by calendaring or compressing of the resulting web. (Column 30, lines 25-30).

Regarding the limitation of having a Liquid Wicking Value of at least about 38% in one of the first and second primary layer regions, the examiner finds the property dependent on the materials employed in the device and their form and spatial orientation in the final product. As these features are taught by the reference, as set forth above, the property is believed inherent to Seymour et al. Further the claimed MAUL and Tau values are abstract concepts that are dependent on the physical attributes in the claim. The prior art is found to disclose each chemical and structural feature instantly claimed, therefore it must meet the property requirement specified, otherwise, applicant's claim is incomplete. Note ex parte Slob (157 USPQ 172), which supports this position.

Claim Rejections - 35 USC § 103

Claims 1, 4, 6-8 and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over SEYMOUR et al. as applied to claims 9-37 and 39 above, and further in view of DODGE, II et al. (US 5820973).

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SEYMOUR et al. fails to expressly disclose that the absorbent core has a crotch width of not more than about 10 cm. However, the use of “narrow crotch” regions is well known in the art. A good example of it is in the DODGE, II et al. reference described below.

DODGE, II et al. disclose a surge material for personal care products and teaches the use of a design of an absorbent article with a “narrow crotch”, which means a crotch width having at most 7.6 cm. (Column 11, lines 61-65)

Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the absorbent article and provide it with a narrow crotch to reduce the bulkiness in the crotch region of the article, improve the fit, comfort and aesthetics. Furthermore, where the general conditions of a claim are met, mere changes in size and shape have been held to be within skill of the art dependent only on the desired end use of the article claimed, *In re Rose* (105 USPQ 237), *In re Dailey* (149 USPQ 47).

Claims 1, 4, 6-8 and 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over BEWICK-SONNTAG et al. (US Patent 5,762,641) in view of ZENKER et al. (US 6245051B1) and DODGE, II et al. (US 5820973).

BEWICK-SONNTAG et al. discloses an absorbent article comprising a liquid pervious top sheet, a liquid impervious backsheet, and an absorbent core. (Column 9, lines 23-26). The absorbent core comprises: a first structure comprising an upper layer comprising a first fibrous material and a first superabsorbent material, the absorbent core also comprises a second structure comprising a second fibrous material and a second superabsorbent material. (Column 3, lines 1-10). BEWICK-SONNTAG et al. also teaches that the first structure can comprise first particulate super-absorbent mixed with the first fibrous material as a substantially homogeneous upper

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layer, but preferably some of the super-absorbent is present in a distinct layer below the upper layer of first fibrous material. The second or storage-structure can comprise a mixture of the second fibrous material and the second superabsorbent material. Preferably, they are present in distinct layers. (Column 4, lines 27-36).

However, the reference does not disclose an absorbent core with a dry thickness of not more than about 6 mm, and a minimum crotch width of not more than about 10 cm.

ZENKER et al. disclose an absorbent article and teach a retention portion 48 that can have a dry thickness which is at least a minimum of about 0.1 cm and can be not more than about 0.8 cm. (Column 13, lines 29-39) However, the use of “narrow crotch” regions is well known in the art. A good example of it is in the DODGE, II et al. reference described below.

DODGE, II et al. disclose a surge material for personal care products and teaches the use of a design of an absorbent article with a “narrow crotch”, which means a crotch width having at most 7.6 cm. (Column 11, lines 61-65)

Regarding the limitation of having a Liquid Wicking Value of at least about 38% in one of the first and second primary layer regions, the examiner finds the property dependent on the materials employed in the device and their form and spatial orientation in the final product. As these features are taught by the reference, as set forth above, the property is believed inherent to Seymour et al. Further the claimed MAUL and Tau values are abstract concepts that are dependent on the physical attributes in the claim. The prior art is found to disclose each chemical and structural feature instantly claimed, therefore it must meet the property requirement specified, otherwise, applicant's claim is incomplete. Note ex parte Slob (157 USPQ 172), which supports this position.

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As for Claim 4, the Combined Conductance-Wicking Value is inherent from the structure in the independent claim.

As for Claim 6, BEWICK-SONNTAG et al. also teaches that the first structure is intended to be positioned toward a wearer's body in use.

Since BEWICK-SONNTAG et al., ZENKER et al. and DODGE, II et al. are all from the same field of endeavor, the purpose disclosed by ZENKER et al. and DODGE, II et al. would have been recognized in the pertinent art of BEWICK-SONNTAG et al.

Therefore it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the absorbent article and provide it with a dry thickness between about 0.1 cm to about 0.8 cm, and with a narrow crotch with the motivation of reducing a wet-thickness of the absorbent structure and also to reduce the bulkiness in the crotch region of the article, improve the fit, comfort and aesthetics of it as disclosed by ZENKER et al. (Column 2, lines 22-26).

(11) Response to Argument

Appellants have argued that there is no fact-based explanation for whether, how and why Seymour et al. contains each and every element of Appellant's claimed invention. While Appellants argue that the Examiner has failed to (i) identify each and every element of the claimed invention, (ii) determine their meaning in light of the specification and prosecution history and (iii) identify corresponding elements disclosed in Seymour et al.; Appellants do not indicate which elements they believe are not anticipated in the reference.

Regarding the limitations of Liquid Wicking Value, MAUL and Tau values, these are abstract concepts that are dependent on the physical attributes of the claimed invention. The

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prior art is found to disclose each chemical and structural feature instantly claimed, therefore it must meet the property requirement specified, otherwise, applicant's claim is incomplete. Note ex parte Slob (157 USPQ 172), which supports this position.

Further, Appellants argue that there is no suggestion, teaching or motivation to combine the Dodge, II et al. reference with the Seymour et al. reference in order to use an absorbent core with a "narrow crotch", and further the Zenker et al. reference. It is noted that it is not hindsight to make was is common knowledge. While all the features claimed are inherent from the Seymour et al. reference, the Dodge, II et al. reference is related art that serves as evidence to prove that the use of a "narrow crotch" in an absorbent core is common knowledge. The Zenker et al. reference provides motivation to make an absorbent article with a dry thickness between about 0.1 cm to about 0.8 cm. for the purpose of reducing a wet-thickness of the absorbent structure and also to reduce the bulkiness in the crotch region of the article, improve the fit, comfort and aesthetics thereof. (Column 2, lines 22-26)

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

nlt

January 10, 2003

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APPEAL CONFeree:

